

STATE OF MICHIGAN
COURT OF APPEALS

AMERICAN AUTO RECYCLERS, L.L.C.,

Plaintiff-Appellant,

v

FERROUS PROCESSING & TRADING
COMPANY, STRONG STEEL PRODUCTS,
L.L.C., and JOHN DOE,

Defendants-Appellees.

UNPUBLISHED

June 9, 2009

No. 285314

Wayne Circuit Court

LC No. 07-711412-NZ

Before: Fitzgerald, P.J., and Talbot and Shapiro, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants summary disposition pursuant to MCR 2.116(C)(10). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed this action to recover damages under MCL 600.2919a(1)(b), which allows for recovery of three times the amount of actual damages sustained, plus costs and reasonable attorney fees, if a person is damaged as a result of “[a]nother person’s buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property when the person buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property knew that the property was stolen, embezzled, or converted.” Plaintiff alleged that defendants knew that scrap vehicles that they purchased from Michael Fawaz, an individual member of plaintiff, were stolen, embezzled, or converted. The trial court found that there was no evidence that defendants knew that the scrap vehicles were stolen, embezzled, or converted and, therefore, granted defendants’ motion for summary disposition.

Summary disposition may be granted under MCR 2.116(C)(10) when “there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law.” This Court reviews a trial court’s decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Because MCL 600.2919a(1)(b) refers to “knew,” not “should have known,” constructive knowledge is insufficient to impose liability. *Echelon Homes, LLC v Carter Lumber Co*, 472

Mich 192, 200; 694 NW2d 544 (2005). However, a defendant's actual knowledge may be established circumstantially. *Id.*¹

First, there is no merit to plaintiff's contention that the trial court misunderstood its argument as being premised on a showing of constructive knowledge. The court's explanation for its decision refers to circumstantial evidence and indicates that it was cognizant of the correct standard and determined that plaintiff had failed to create a genuine issue of material fact with respect to defendants' knowledge.

We agree with the trial court that defendants were entitled to summary disposition. The submitted evidence showed that the sale of scrap auto bodies to defendants was arranged between Michael Fawaz, who represented himself as the owner of plaintiff, and Kevin Sparkes, a purchaser for defendants. Sparkes did not know at the time whether plaintiff was a sole proprietorship, an assumed name, a partnership, or a corporation. Fawaz directed Sparkes to pay for the purchase by issuing multiple checks in amounts less than \$10,000, made payable to Fawaz. Sparkes did not inquire why Fawaz wanted payment in that manner. Defendant Ferrous Processing & Trading Company issued five checks payable to Fawaz for \$9,780.90 each. Although plaintiff asserts that defendants had "dealt with" plaintiff the previous year and issued checks payable to plaintiff, not Fawaz, plaintiff did not present evidence to support this assertion.² In actuality, plaintiff was a limited liability company, of which Fawaz was an individual member. According to plaintiff's operating agreement, Fawaz held a 49-percent ownership interest in plaintiff and Ali Habhab held the remaining 51-percent interest.

Even if one may infer from the peculiarity of the request for multiple checks below \$10,000 that Sparkes was aware that Fawaz was attempting to evade bank reporting requirements,³ such evidence does not support an inference that Sparkes was aware that the scrap vehicles were stolen, embezzled, or converted, particularly in the absence of any evidence that defendant knew that Fawaz did not have an interest in plaintiff. Absent such evidence, Fawaz's request that the checks be made payable to him does not create a genuine issue of material fact concerning defendants' knowledge that the scrap was stolen, embezzled, or converted. Thus, the

¹ Although *Echelon* was decided under a prior version of the statute, the term "knew" is present in both the current and former versions.

² Ali Habhab, a member of plaintiff, submitted an affidavit that merely purports to verify the accuracy of all factual statements set forth in plaintiff's brief in response to the motion for summary disposition. Such an affidavit does not comply with MCR 2.119(B)(1).

³ See 31 USC 5324, which prohibits the structuring of transactions to evade bank reporting requirements involving transactions in excess of \$10,000.

trial court did not err in granting defendants' motion for summary disposition.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Michael J. Talbot

/s/ Douglas B. Shapiro